IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 116 of 1992

Date of Decision :- March 19, 2007

Mohan ....PETITIONER

VERSUS

State of Haryana ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

Present:- Mr. Ajay Kaushik, Advocate (Amicus Curiae)
for the petitioner.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is a revision against the judgment dated 3.2.1992 of the Additional Sessions Judge, Hisar, whereby he modified the judgment dated 12.1.1991 of Sub Divisional Judicial Magistrate, Fatehabad, by reducing the sentence of Mohan son of Sawal Ram from one year R.I. to six months, but maintained the sentence of fine of Rs.1,000/- and conviction of the accused/petitioner under Section 9 of the Opium Act.

The case of the prosecution is that on 10.2.1985, ASI Hans Raj, HC Ram Kishan, Constable Phool Singh and other police officials were going from Fatehabad towards Bhattu. When the police party reached near the Fatehabad minor, petitioner was apprehended. From the

search of the petitioner, 1 Kg 500 grams of opium was recovered. 10 grams was taken as sample. Seal HS was put on the sample and the main quantity of opium and the seal was handed over to HC Ram Kishan. The case property was taken into possession vide recovery memo Ex.PA. Ruqa Ex.PB was sent to the police station. On the basis of ruqa Ex.PB, FIR Ex.PB/1 was recorded. Sample was sent to FSL, Madhuban and report Ex.PD revealed that it was opium.

The prosecution to prove its case brought into the witness box Ram Kishan as PW1, Hans Raj ASI as PW2 and Dr. S.S.Shukla as PW3.

Learned counsel for the petitioner has argued, that no independent witness was joined in spite of they being available. ASI Hans Raj PW2 deposed, that 20-30 persons had passed by their side. Similarly, HC Ram Kishan PW1 has stated, that 15-20 persons had passed by. Affidavit of MHC Ishwar Singh Ex.PX is defective and has not been verified according to law. As per affidavit Ex.PY of Constable Om Parkash, he deposited the sample with the Assistant Chemical Examiner on 11.2.1985, but as per the report of the Chemical Examiner Ex.PD, the sample was deposited on 12.2.1985.

Learned counsel for the State has argued, that the raiding party was on patrol duty. Though the Investigating Officer tried to join independent witnesses, but they refused to do so. The police party was going from Fatehabad to Bhattu Kalan. Nothing has come on record as to whether any independent witness was willing to become a party to the recovery. HC Ram Kishan PW1 has stated, that people, who had come, were passersby.

I have heard the learned counsel for the parties, perused the record and the impugned judgment with their assistance.

MHC Ishwar Singh has submitted an affidavit Ex.PX. There is no defect in the affidavit, apart from that it is not worded very well. It is clear that the affidavit is based on the knowledge of the deponent. In the affidavit Ex.PY of Om Parkash, there is no infirmity. It is also clear that the sample was handed over to the Assistant Chemical Examiner, Madhuban on 11.2.1985. The recovery was effected on 10.2.1985 and the sample was sent through HC Om Parkash on 11.2.1985, the very next day. There is no chance of tampering.

The discrepancies pointed out in the statements of the official witnesses are not material. The prosecution witnesses have corroborated each other inter-se and they get corroboration from the Chemical Examiner's report Ex.PD.

I do not find any infirmity in the judgment of the learned Additional Sessions Judge, Hisar. Conviction under Section 9 of the Opium Act is maintained. Revision is of the year 1992 and the recovery is of the year 1985. Sentence is on the higher side. Sentence of the petitioner is modified to that already undergone.

With the above modification in sentence, revision petition is dismissed.

March 19, 2007 **(MEHTAB S.GILL)**
ska **JUDGE**